

GEORGE P. BURNS  
16 Little Fox Lane  
Norwalk, CT 06850

V.

Defendant.

## COMPLAINT

PARTIES

## FACTS

5. In June 1991, Plaintiff received a company command annual officer evaluation report (“OER”) for the period 14 June 1990 to 13 June 1991. The OER contained evaluations by a rater and a senior rater.

6. During the rating period, plaintiff served in Germany and later in combat in Southwest Asia during the Persian Gulf War. Plaintiff is an infantry officer.

7. In the OER, Part VIIa., plaintiff’s senior rated evaluated the plaintiff’s potential by placing an “X” in the second block of ten available blocks, with ten being the lowest rating. Under Army regulations, this rating is made by comparing all other officers of the same grade Army-wide. At the time of the rating, plaintiff was rated above the center of mass for company commanders.

8. In Part VIIb of plaintiff’s OER, the senior rater noted:

CPT Burns has developed into an outstanding Company Commander. His company executed a safe and rapid deployment to SWA [Southwest Asia] and performed superbly during offensive operations aimed at the liberation of Kuwait. Consolidation operations and humanitarian assistance provided by his company after cessation of hostilities were particularly outstanding.

Solid potential for advancement. Promote to major and consider for CGSC [Command and General Staff College] when eligible.

(This evaluation does not reflect a downturn in performance; rather I have restarted my profile).

9. Plaintiff’s senior rater profile, prior to the restart, had a center of mass in the third of 10 blocks. After the senior rater restarted his profile, his center of mass was at the second of 10 blocks.

10. Plaintiff appealed his OER to the Officer Special Review Board (“OSRD”) on March 6, 1993, seeking to delete Parts VII a and b, on the basis that this report unfairly showed him below or at center of mass when a fair evaluation would show him above center of mass.

11. The OSRB denied plaintiff’s appeal on July 2, 1993.

12. In 1996, plaintiff was selected for promotion to Major. The selection rate for this board was about 85%.

13. In 1996, plaintiff was not selected to attend resident Command and General Staff College. He was also non-selected on September 7, 1997, one year after most of the peers in his grade. It is unlikely that the plaintiff will be selected for attendance in the future.

14. The non-selection of plaintiff for Command and General Staff College in 1996 and 1997 is indicative of the fact that plaintiff's future career opportunities with the U.S. Army will be limited.

15. Plaintiff now seeks judicial review of the Army's failure to promote him and to select him for Command and General Staff College.

#### CAUSE OF ACTION

The Army's denial of relief to plaintiff is arbitrary and capricious, unsupported by substantial evidence, and otherwise not in accordance with law, Army regulation and practice.

PRAYER FOR RELIEF

WHEREFORE, for all the foregoing reasons, plaintiff demands judgment against defendant

- a) That the Army be ordered to amend plaintiff's OER covering the period 14 June 1990 through 13 June 1991, by deleting Part VIIa and VIIb;
- b) That the Army set aside plaintiff's two non-selections to attend the resident Command and General Staff College and reconsider plaintiff's 1997 application to attend the school;
- c) That this Court grant any and all additional relief as deemed appropriate, including attorneys' fees and costs.

GEORGE P. BURNS

By \_\_\_\_\_  
Counsel

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